

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941- BB

RIO CHAMA STREAM SYSTEM
Section 3: Rio Cebolla

Subfile No. CHCB-005-0002

MOTION TO STAY LITIGATION PROCEEDINGS

COMES NOW the Plaintiff State of New Mexico, *ex rel.* State Engineer (“State”) and moves the Court to stay the litigation proceedings between the State and Defendants Estate of Julian Serrano, Deceased and Flavio Gurule (“Defendants”) in Subfile CHCB-005-0002, and as grounds states the following:

1. The disputed claims of the Defendants in subfile CHCB-005-0002 are the subject of the Pretrial Order filed August 25, 2009 (Doc. 9491) (amended January 21, 2010, Doc. 9566).

2. The State and the Defendants wish to stay the litigation proceedings in this subfile in order to pursue structured settlement negotiations. The State has obtained the approval of the State Engineer to use the services of Charles Kinney from the Office of State Engineer’s Hearing Unit to facilitate these discussions. Mr. Kinney is employed full time as a mediator in the Hearing Unit, and the use of his services in this matter would be without charge to the parties.

3. Gabriel Wade, who has been responsible for the prosecution of this disputed subfile proceedings up to this time, is no longer working in the Litigation and Adjudication Program of the Office of the State Engineer and has been reassigned to other duties. Barbara Bill recently entered her

appearance in order to represent the State in this matter, including participation in the anticipated settlement negotiations described above. *See Substitution of Counsel* filed February 10, 2010 (Doc. 9578). Ms. Brill has recently had surgery and will be unable to complete her review of the file materials in this subfile for several weeks.

4. Counsel for the State of New Mexico has conferred with Brian Egolf, Jr., counsel for the Defendants, and Mr. Egolf agrees that there is a potential to reach a settlement agreement in this subfile and that the parties interests would best be served by focusing on settlement discussions at this time. The parties anticipate that they will schedule settlement negotiations with Mr. Kinney acting as facilitator in April or early May. Within 30 days of the first joint meeting of the parties for settlement negotiations with Mr. Kinney, the parties will file a status report with the Court. If the State and the Defendants are unable to reach an agreement on the Defendants' water rights, the present litigation proceedings will be reinstated and the existing pretrial scheduling order will be amended as needed.

5. Brian Egolf, Jr., counsel for the Defendants, supports the granting of this motion.

WHEREFORE the State respectfully requests the Court to stay the litigation proceedings, including all existing deadlines, under the Pretrial Order filed August 25, 2009 (Doc. 9491) (amended January 21, 2010, Doc. 9566) in subfile CHCB-005-0002.

Respectfully submitted,

/s/ Ed Newville
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of February, 2010 I filed the foregoing electronically through the CM/ECF system which caused the parties on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail.

/s/ Ed Newville
EDWARD G. NEWVILLE